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C O N F I D E N T I A L SECTION 01 OF 02 GUATEMALA 000466

SIPDIS

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TAGS: [PREL](#) [PGOV](#) [KDEM](#) [GT](#)

SUBJECT: PRESIDENT BERGER FIRES ATTORNEY GENERAL,  
CONSTITUTIONAL COURT TO RULE

Classified By: PolOff Robert E. Copley for reason 1.5 (b)

¶1. (U) Summary: President Berger announced on February 24 that he had fired Attorney General Carlos De Leon. The Constitutional Court has twice issued temporary rulings upholding Berger, but its final rulings could yet reinstate De Leon and deal a severe blow to Berger's legal reform efforts. Media coverage and civil society strongly favor the President's action. GANA Congressman Juan Luis FLORIDO Solis has replaced De Leon under some criticism that he lacks independence from the President. End Summary.

#### Background

¶2. (U) Attorney General Carlos De Leon was chosen by former President Portillo from a list of six names chosen through a consultative process. Note: Florido's name was also on the list. Rumors at the time linked De Leon to a number of corrupt business deals with the municipality of Mixco (a Guatemala City suburb) and rigged bids for government construction contracts that he subsequently subcontracted. Throughout his tenure, it became increasingly clear that De Leon was more interested in promoting his image than in pursuing prosecutions. High profile cases stalled, a series of prosecutors resigned citing interference by De Leon, and in early February 2004, De Leon used two million Quetzales (about \$250,000) in scarce resources to host a World Summit of Attorneys General (which we and most developed countries did not attend). Tensions between Berger and De Leon have been building since Berger took office on January 14, 2004. On February 23, President Berger publicly gave De Leon a deadline of 24 hours to explain his actions in three cases. De Leon refused in an equally public manner to comply, citing his constitutional autonomy within the Executive. Hours before the deadline, De Leon sought a ruling from the Constitutional Court vacating Berger's order and reaffirming the independence of the Attorney General. In record time, the court refused to issue a stay and Berger announced to the media that he had fired De Leon. De Leon promptly filed a new lawsuit claiming his dismissal, which was signed by Berger and 13 Ministers and was published as a government accord in the official gazette on February 25, was illegal. Late February 25, the court again issued a temporary ruling in favor of Berger, this time unanimously. A third suit by De Leon was not accepted. Based on these rulings, a judicial order was issued to prevent De Leon from leaving the country.

But the rulings are not final

¶3. (C) The Constitutional Court's rulings are only temporary, however. Final rulings are expected in about two weeks. Juan Fransisco Flores Juarez, Constitutional Court Magistrate, told us that he fears the Court could easily backpedal. If the court rules in De Leon's favor in either case, (there is a legal precedent for upholding his autonomy-see comment) De Leon would have to be reinstated and Berger's legal reform efforts would suffer a major early defeat.

#### Staff Implications

¶4. (C) Alejandro Paiz, head of Criminal Investigations, announced he will resign. Special Prosecutor for Human Rights, Thelma de Lam, with whom we have had a productive relationship, told HROff on February 24 that, even though she has a contract with the new administration, she would leave if De Leon's firing is upheld. She added that 15 people in her office have only temporary contracts and would also probably be let go. Shortly after the meeting, police officers and representatives from MINUGUA and the Human Rights Ombudsman's office surrounded the building due to complaints that De Leon's employees were removing computers and shredding documents. According to press reports, police seized computers that these employees were loading into two pickup trucks.

#### Replacement Sworn In

¶5. (U) De Leon's dismissal (Acuerdo Guberantivo 84-2004) also nominated lawyer Juan Luis Florido Solis to fill out the remainder of De Leon's original four-year term that began in May, 2002. Florido's name, along with De Leon's, was among six produced by a consultative process. In case of the resignation or removal of an Attorney General, the President

is required to nominate a replacement from the same short list. Florido was serving in the Congress as a member of Berger's GANA coalition. The Mack Foundation and Supreme Court Justice Alfonso Alvarez-Lobos have already criticized Florido as not independent enough to be Attorney General. In response, Florido has pointed out that he was a candidate for Attorney General long before he became a candidate for Congress. He has resigned from the Reform Movement party, part of the GANA coalition. Others have criticized Florido's lack of penal experience. As a lawyer, Florido represented corporate interests, including Caterpillar and Hewlett Packard (though not currently). Note: Hewlett Packard has a multi-million dollar contractual dispute with De Leon's Public Ministry. End Note. Florido has served as President and Vice President of the Chamber of Tourism as well as President of Banco Inmobiliario.

#### Comment

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16. (C) In early 1996, then-President Arzu gave his Attorney General, Ramses Cuestas, a 48-hour deadline to file a similar report. In that case, the Constitutional Court upheld Cuestas' assertion that complying with the deadline would strip his office of its constitutional autonomy within the Executive. The current court, however, is the same court that overturned numerous precedents when it allowed Rios Montt to run for President. It is tempting to read into the court's temporary ruling against De Leon that the FRG has decided to dump the Attorney General (the President of the Constitutional Court is an FRG hack), but FRG Congressional representatives left the floor in an unsuccessful attempt to deny Florido the quorum he needed to resign his seat in Congress.

17. (U) Firing the Attorney General without final rulings from the Constitutional Court is a bold move by President Berger, one that has been widely applauded by civil society. There is no doubt in the public mind that De Leon has largely failed to carry out his duties--the official reason for his dismissal according to Berger--but it remains to be seen what standard the Constitutional Court will use. The unanimous second ruling against De Leon is a very positive sign, but until these rulings are finalized they cannot be taken for granted.

HAMILTON